

**Meeting Minutes for Fast Track Workgroup
January 16, 2003, 1:00 PM to 3:30 PM
Shadeland, Conference Room D**

Attendance:

Neil Parke (Eli Lilly), Bill Beranek (Indiana Environmental Institute), Bowden Quinn (WPCB member), and Glenn Pratt (Sierra Club)
IDEM representatives: Mary Ellen Gray, John Nixon, John Elliott, David Kallander, Lonnie Brumfield, Larry Wu, and MaryAnn Stevens

Purpose of Workgroup

The purpose of this workgroup is to review the list of expedited rulemaking issues that the Triennial stakeholder workgroup identified and come to closure on the process for an expedited rulemaking. This list was identified by the Triennial stakeholder group to include changes based on best science, updates of existing rule language, and technical corrections and clarifications that have a reasonable potential of minimal controversy.

Workgroup Discussion

Bill Beranek asked IDEM staff to explain the implications of the "Alaska Rule". David Kallander offered his understanding of how this rule came to be and what it signifies. EPA was challenged in court over its interpretation of section 303 of the Clean Water Act (CWA). EPA's interpretation of the CWA was that state approved water quality standards (WQS) that were disapproved by EPA were effective until EPA promulgated new standards for the state. The result of the lawsuit was that state-adopted, water quality standards must be approved by EPA before the state WQS becomes "applicable" for CWA purposes. This applies not only to the adoption of new state WQS rules but also to the implementation of site specific criteria methodologies and approval of variances from WQS. States must get formal EPA approval of site specific criteria if the criteria being modified have been previously adopted into state rules. Site specific modifications to Tier I criteria and Tier II values that have not been adopted into state rules do not need EPA approval. David indicated that EPA must also approve variances before they become effective even if the variances are from criteria or values that have not been adopted in state rules. Workgroup members questioned whether this was correct. Some argued that the approval of the state NPDES permit constituted approval of any variance associated with that permit. IDEM staff will request clarification from EPA on this issue and report back to the workgroup at the next meeting.

Neil Parke stated that Texas has developed rules for determining site specific criteria that can be implemented without requiring EPA approval under the "Alaska Rule". David, to date, hasn't found any information supporting this activity in Texas; Neil stated that he would provide this information.

The workgroup discussed what constitutes a noncontroversial issue for the purposes of this fast track triennial rulemaking. Briefly stated, to be noncontroversial an issue needs to be one that is easily understood. As well, the issue should be one for which the workgroup can make a decision without extensive discussion that the issue is ready to be subject of a rulemaking. Bowden contributed his idea of noncontroversial, from the viewpoint of the environmental activist community, as an issue that could be reviewed by Peter deFur without his objecting to it.

John Elliott referred to the December 10, 2002 meeting minutes that mentioned the possibility of two fast track rulemakings. To mesh with the name, fast track, it would make sense to have only

one rulemaking. If during initial workgroup discussions some issues seem not to be noncontroversial yet not deserving to be delayed so long as the remainder of triennial issues, then perhaps a second fast track rulemaking would be in order.

Concerning rule procedures, John Nixon reminded the group that there currently are open rulemakings, each in first notice stage, that cover the triennial water quality subjects. It is yet to be decided if those first notices are adequate or will be withdrawn. For fast tracking, not having to reissue a first notice of rulemaking would be expedient. Whether fast track proceeds from first or second notice, it will be essential to have a notice that explains and communicates the issues to the public. Grouping, or clustering, of issues and various existing rule sections can be accomplished in a single rulemaking.

A question from the December 10, 2002 meeting concerning 327 IAC 2-1.5-18(e) needs confirmation from John Nixon as to whether the issue is addressed by SEA 431. If it is not, then section 18(e) will need to be included in the list of fast track issues.

List review

Continuing the review of issues listed in the December 6, 2002 paper on fast track rulemaking for triennial, this workgroup meeting discussed the 327 IAC 5-2-11.1 and 327 IAC 5-2-11.4 citations.

Citations/issues ready to move forward in rulemaking:

327 IAC 5-2-11.1(d) and (e)
327 IAC 5-2-11.4(b)(2)(A)(ii)(BB)
327 IAC 5-2-11.4(b)(3)(A)(i)(AA)
327 IAC 5-2-11.4(b)(3)(B)(ii)
327 IAC 5-2-11.4(b)(4)(A)(iii)

Citations/ issues needing more discussion before proceeding in rulemaking:

Article 5, Implementation Procedures: Updates to the Basic NPDES Requirements
327 IAC 5-2-11.1(g)(2)
327 IAC 5-2-11.1(i)
327 IAC 5-2-11.4(a)(8)(C)(ii)
327 IAC 5-2-11.4(b)(2)(A)(i)(AA)
327 IAC 5-2-11.4(b)(3)(B)(i)
327 IAC 5-2-11.4(b)(4)(C)
327 IAC 5-2-11.4(c)

Follow up issues

For issues still in need of discussion as listed above, John Elliott is working on providing explanations of the issues, what EPA guidance says on the issue, and development of potential rule language changes and what results those changes would cause in discharge permits.

Next Meeting Date

February 26, 2003, at 9:30 A. M. to 12:30 P. M., in Room 1319 of the IGCN building.

Next Meeting issues

- Continue reviewing potential fast track rulemaking issues starting with 327 IAC 5-2-11.5 listed on page 6 of the December 6, 2002 list of Triennial Rulemaking Expedited Issues